

SPECIAL COUNCIL MEETING

JUNE 5, 2013

The Special Council Meeting of the Council of the County of Kaua'i was called to order by the Council Chair Jay Furfaro at the Council Chambers, 4396 Rice Street, Room 201, Lihu'e, Kaua'i, on Wednesday, June 5, 2013 at 9:11 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Nadine K. Nakamura
Honorable Mel Rapozo
Honorable Jay Furfaro

Excused: Honorable JoAnn A. Yukimura

Chair Furfaro: Aloha and good morning. Will the record reflect that I had a written excuse from Councilmember Yukimura?

Clerk: So noted.

APPROVAL OF AGENDA.

Ms. Nakamura moved for approval of the agenda as circulated, seconded by Mr. Kagawa, and unanimously carried.

COMMUNICATION:

C 2013-208 Communication (05/28/2013) from Council Chair Furfaro, requesting the presence of the Director of Planning and the Prosecuting Attorney, to provide the Council with a briefing regarding the coordination of efforts between the Planning Department and the Office of the Prosecuting Attorney to enforce the Transient Vacation Rental (TVR) ordinance and their plans for dealing with the various enforcement issues raised by the public and Councilmembers: Mr. Rapozo moved to receive C 2013-208 for the record, seconded by Ms. Nakamura.

Chair Furfaro: For the public, when we do come back out of Executive Session, I do believe that the Planning Director Mike Dahilig, Ka'aina Hull, the Prosecutor Justin Kollar will all be present. I would like to go first to the two Executive Session items to be read.

There being no objections, the rules were suspended.

ALFRED B. CASTILLO, JR., County Attorney: Good morning.

Chair Furfaro: Al, before you read the items, I would like you to read the first one as ES-645, so we can get a quick briefing on that and then go on to the second one. Can you read them both in that order, I would appreciate that.

Mr. Castillo: For your consideration ES-645.

There being no objections, ES-645 was taken out of order.

EXECUTIVE SESSION:

ES-645 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the purpose of this Executive Session is to provide Council with a briefing and request for authority to settle the case of Curtis Cabral v. County of Kaua'i, Civil No. 12-1-0016 JRV (Fifth Circuit Court) and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

ES-644 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing on Ordinance Nos. 864, 876, and 904 (Codified into Ordinance No. 935 "New CZO") and legal issues relative to the implementation of the Transient Vacation Rental regulations and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

There being no objection, the meeting was called back to order.

Chair Furfaro: Members, what I would like to do is take public testimony at this time before we go into Executive Session. Again, a reminder to you folks that we will be coming out in open session to take the communication C 2013-208. Is there anyone that would like to speak on these items now? Come right up, Caren.

There being no objections, the rules were suspended to take public testimony.

CAREN DIAMOND: Aloha. I just want to ask you as you are going into Executive Session to please when you come back, please address the things that can be addressed in open public, to address those in open public and only do at the minimum what must be done in Executive Session so that there is Sunshine and so that this transparency with this issue. That is my only request. Thank you.

Chair Furfaro: Yes Caren, I want to let you know that I read the other names of individuals that will be available in open session and I do expect some presentation that can be made available to the public. I also want to say as Chairman for the last three and a half years, I take it personally that we keep Executive Sessions to legal and personnel items. Your request will be followed.

Ms. Diamond: Thank you.

Chair Furfaro: Is there anyone else that would like to testify on ES-645? No one? Okay. Which has been my practice here, I will go into Executive Session by a roll call vote.

Mr. Bynum moved to go into Executive Session to discuss ES-644 and ES-645 respectively, seconded by Mr. Kagawa, and carried by the following vote:

FOR EXECUTIVE SESSION:	Bynum, Hooser, Nakamura, Rapozo, Furfaro	TOTAL - 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL - 1,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Chair Furfaro: Members, we are going to move into Executive Session if you can be in the Chambers in five minutes, I would appreciate that.

There being no objections, the meeting was in recess at 9:17 a.m.

The Council reconvened at 11:46 a.m., and proceeded as follows:

Chair Furfaro: We are back in session from a Special Council Meeting. I would like for the record, the County Clerk, and County Attorney to please note that on this Special Council Meeting which was posted for 9:00, I had given opportunity for several members that are in the audience now to give testimony on this item earlier which included Attorney Mr. Chun, Mr. Taylor, Mr. Mickens who were all present. I did announce that I would take testimony then so there will be no additional testimony taken from the public. The opportunity was placed at 9:00 in the morning with the posting and the only one that chose to come up from the group was Caren Diamond. Please make note of that for the record because I am dealing with an OIP issue at present that was filed against me indicating that I did not provide opportunity for public testimony. In fact, some of those individuals were actually not even present in the audience on the particular date where they are filing the grievance against me but for all intensive purposes that opportunity was provided at the start of the posting. On that note, I would like to ask the Planning Director at this time after I read the item to come up and give us a presentation. Now, can I re-read the item that we are going back to?

C 2013-208 Communication (05/28/2013) from Council Chair Furfaro, requesting the presence of the Director of Planning and the Prosecuting Attorney, to provide the Council with a briefing regarding the coordination of efforts between the Planning Department and the Office of the Prosecuting Attorney to enforce the Transient Vacation Rental (TVR) ordinance and their plans for dealing with the various enforcement issues raised by the public and Councilmembers

Chair Furfaro: Also on that note, I would like to restate the fact that Vice Chair and I have to engage in another conference at 12:15. We do plan to take a lunch break at 12:30 and to our other citizens who are here for the communications on the Committee Meetings today, we will start Committee Meetings after lunch at 1:30. If we need to go beyond the afternoon for this Special Council Meeting, we will continue after the Committee Meetings are complete. At 12:15 Mr. Rapozo, you are the Vice Chair of the Committee of the Whole, this is in fact a Council Meeting. Nadine and I will be absent and I will turn the gavel over to Mr. Bynum as the Finance Chair, according to our rules, he is the third person in charge. On that note, you have the floor.

There being no objections, the rules were suspended.

MICHAEL A. DAHILIG, Director of Planning: Thank you, Council Chair. Good morning. I prepared a PowerPoint presentation to outline and summarize some of the discussion that we have been having over the past couple

months on this issue to kind of bring into context and really lay out a comprehensive picture as to what we are doing. Before I start, there are couple things from a standpoint of clarity; I just want to make clear on the floor before I proceed. First off, I am here on my own free will. I am not invoking any types of privileges. I believe that the discussion that I am presenting today and that we are going to have on this is not related to any type of personal investigation against me and so I am here on my own free will. The second thing that I do want to say before I start is just to give the Council a personal apology if any of the miscommunication that I had to... that I have given by action given the Council to perceive as disrespect, I am truly apologetic for that. I really want to convey that apology. Given that, I would like to go over these six points this morning. I am going into a timeline of this, talk about the evolution of the regulations, look at the legal parameters that we are faced with respect to enforcement, go into weaknesses that I do see in the Department as well as what we are trying to do to address those weaknesses, and then finally summarize how we are going to fix those weaknesses... solutions for those weaknesses that we do not have solutions for right now. Just in summary, as you are all aware, Single-Family TVRs were not a prohibit use prior to March 2008 but after March 2008 they are now regulated in the County of Kaua'i. Our Department no longer issues new non-conforming use certificates for those outside of the VDA because the application has closed. The TVRs within the VDA are still allowed to come in with a registration to the Finance Department and with those certificates that have been issued there is a requirement to meet documentation to ensure that the nonconforming use is being maintained.

This is a timeline, as best as I can put it together, that outlays what has happened since the passage of Ordinance 864 No. in March of 2008. I have put in what I think are our important points to look at as well as the bubbles that have been created by the application process and then I have also folded in significant events that relate to FEMA as well as when we have adopted Administrative Rules to try to address new laws and how are our Department has been processing agricultural TVRs. I think this provides a comprehensive layered look in what has been the Department's experience for the past five years in implementing the series of Ordinances. Just to give the Council a breakdown as to what exactly... how do we determine what we need to enforce. Let us start off with Ordinance No. 864. As I mentioned earlier, Ordinance No. 864 prohibited TVRs outside of the VDA and then required Single-Family registration as well as Timeshare registration and then required that all Non-Conforming Use (NCU) Certificates be issued by March 30, 2009 or they have to go to the Planning Commission. The Certificate required compliance with a number of Zoning laws as well as the Flood Ordinance and so immediately after this, the Department opened the applications per the law on March 30th and closed the application deadline on October 15th. This bubble of applications actually came right before the October 15th deadline and per an appropriation two new Transient Vacation Rentals Inspectors were assigned primarily responsibility and managing the program and processing the applications. The two gentlemen are actually behind me. It was primarily their job to start up the system immediately after the passage of the Ordinance and go through the processing. Nine months after Ordinance No. 864 happened, the law was changed again to eliminate Timeshares as a requirement with an added three new requirements. One was rules to allow public to contest the renewals for loss of quiet enjoyment and transgressions, website posting of all the applications, and then it also required that a physical inspection of all applications before issuance had to be done before... and essentially by default, it was before the March 30th deadline.

That March 30th deadline remained and it remained set as establishing initially in Ordinance No. 864. The two gentlemen behind me had a 9-week window to post all the certificate applications online and conduct all physical inspections of all NCU certificate applications and that was four hundred thirty-five (435) inspections that had to be conducted. That number we got by actually, just recently, counting everything by hand which we still do not have an automated system yet. The inspections primarily at the time, the inspections were directed to identify density violations between Multi-Family and Single-Family because there is laws on the books going back to the 90s that the County had already prohibited Multi-Transient Vacation Rentals inside of the residential areas. That process after Ordinance No. 876 was adopted, a hundred thirty-five (135) denials were issued by the Department and over seventy (70) of those certificates were appealed including those on State Agricultural lands. The Federal Emergency Management Agency (FEMA) also initiated inquiry into the Non-Conforming Use Certificate Program and after some legal wrangling because of the denials that were issued the Commission went through and approved an additional sixty-nine (69) certificates after the round of denials. Because of the related issues concerning... what do with those on agricultural lands, Ordinance No. 904 was passed and it changed... it opened up a second window for application for Non-Conforming Use Certificates which closed on August 16, 2011. It required prior compliance still but eliminated the rules for loss of quiet enjoyment and the physical inspection requirement. It added two (2) new requirements on the Planning Department. One was to process special permits pursuant to HRS 205 and then it allowed the Department to also withhold renewals for violations. The one-year window to accept the 205 Special Permit applications came in and we actually had to process fifty-six (56) of these special permits. We had moved our resources with TVR inspectors as well as a temporary Planner to focus specifically on Special Permit processing. So, within that eighteen (18) month period we had fifty-six (56) Special Permit application processed through the Planning Commission. On average, the annual intake for special permits is only three (3) to five (5) applications and so you can imagine the resource bubble that had to be addressed by the short-term burn of these Special Permit applications running through the Planning Commission. We also got new authority as I mentioned earlier to withhold renewal approvals, there is a law as a new enforcement tool and I will explain how that folds into our enforcement regime later on but it was key to have that proviso written into the 904 change and then immediately after 904 in a separate Ordinance, specifically Ordinance No. 919 Civil Fine authority was finally given to the Department to actually levy as an additional tool for enforcement. After that has all been laid out, I just want to briefly address, again, why do TVRs impact the neighborhood? Some TVR users do lack the regard for neighbors and treat their home like a hotel room. There is a loss of quiet enjoyment as put in the law and from a safety standpoint it replaces long-term residents with TVR usage which loses the community environment and in turn also makes the community potentially susceptible to tourist-like criminal acts; things like theft, burglary, and it also... you lose the community feel. I just want to impress upon the Council that the Department truly recognizes the severe situation that this has caused. This is a map showing as far as we know of, TVRs along the North Shore outside the VDA. Everything that is red is a registered vacation rental or is in our system. It is a lot. Certainly when you are looking at this many TVR uses interspersed with what is normally a residential community there are impacts and I certainly want to recognize that before I go further into the discussion. This impact was recognized in the 2000 General Plan along with Bed & Breakfasts. It identified as "unregulated use," and by Land Use principles if there has been no prior regulation by the CZO, any new laws regulating that use now grandfather that previously established use. I took an excerpt from the General Plan and

highlighted... the General Plan is adopted by Ordinance, by this body. There was recognition that... and this is the line... "Visitor Destination Area is silent on Single-Family Vacation Rentals and again it is reinforced in the seconded paragraph, the CZO is silent on the issues of Single-Family Vacation Rentals." So that silence in the law means that essentially it was a previously legal use. When we go into enforcement and having to determine how to enforce on a particular land use violation, we have to be cognizant of the principle of grandfathering. As we all know and this body is well established in the legal principle that balances constitutional principle that essentially vested rights that have not been regulated in the past. By the TVR Ordinance we have recognized that a use that was previously legal as now nonconforming and that is the process hence the phrase "Non-Conforming Use Certificate." In applications of the law there is this principle of "structure" versus "use" and briefly "structure" concerns the regulation of form and character, things like setbacks, enclosures, and height. Whereas, when you are looking at "use" concerns regulation of how a structure is used, so an elementary school, an auto shop, things like poultry raising, you would be surprised that poultry raising is a use defined in the CZO. I can tell you from enforcement purposes, I had to cite somebody that had more than four (4) chickens on their property. These are the things that the CZO defines. They defines structural elements and they define use elements. When we look at how the CZO is applied, we have to be also recognize that the authority for the CZO comes from the Hawai'i Revised Statutes (HRS) and under 46-4 we had to be aware that the continued lawful use of a building in a residential area must be maintained when a new Ordinance is enacted to regulate that use. Further on, we cannot amortize or phase out uses unless the landowner voluntarily abandons the use and so when we look at abandonment are voluntary definition is one-year per our Ordinance.

Given the reading of what happened in the timeline right after Ordinance No. 876 happened but before Ordinance No. 904 there were allegations that our Department improperly issued certificates. Those allegations generally, and I am just generalizing, I am not being specific to all of them but generally they have been centered around the fact that there has been noncompliance with other land use laws. What we determined in taking a look at some of the recent articles online is that there are in fact violations of these other laws and there is a genuine health and safety concern when it comes to things like flood violations and that is why we had the FEMA discussion back in 2010. However, when we looked at grandfathering in because before we enforce we have to establish whether something has been grandfathered or not, we look at whether or not these violations are related to the use or they are not related to the use. What is a clear principle of law under the Hawai'i (inaudible) is that violations of other structural laws cannot prohibit grandfathering of a use that was previously lawful. Because we had a General Plan in 2000 that said CZO is silent as to Single-Family Vacation Rentals, that silence means that the use was previously lawful. We are able though, this is somewhat of the good news, to require Administrative maintenance of the lawful use, and the previously lawful use hence the one-year timeline in the CZO. We can require the nonconforming use certificates to come in on a certain deadline, we can require them to have certain documentation but the use has to be maintained in the matter prescribed by law and that we can comply with. I understand the frustration that people say "why can't structural violations apply?" I tried to breakdown the issues that we have been seeing in not only the blogs but also in other... in looking through the files that these are the differences between use and structure and when we have violations of structure, they cannot be on the use but they can be enforced independently across the island using the enforcement mechanisms in those Ordinances. As I mentioned before the tool that has been

given to the Department in the 904 legislation is this withholding. I have the discretion to withhold reissuance of a permit if I find that there are violations of land use laws that continue to persist. What that means is that the grandfathered use is still recognized but we do not allow you to engage in that use until you make your use safe... your structure safe. Those are the things that now we have the tools to compel a TVR certificate holder to say "okay, we are not severing your use, what we are saying is that you got to stop people from living beneath your house because it is in violation of flood law and somebody can get hurt and we will not renew your certificate until such time." By process have implemented a cease and desist process to then tell people that if you continue to operate that way, we will find you. That is what we are trying to tee up within the parameters of the grandfathering principles to allow the recognition of a vest right but at the same time to hold people accountable for health and safety reasons.

Now that I have lay this out we have to look at... these are general questions that I think everybody is asking. What are the issues and challenges? What are some of the solutions? If we do not have a solution, how are we going to find out about these solutions? How do we move from here?

What we have been trying to do from an implementation standpoint, let me give you a clue as to what we are doing right now from an implementation standpoint. What we need is a system for efficient and accurate file management and we have an annual renewal process as prescribed by the law. We look at six hundred and forty-four (644) files overall and we have to by law cross check and verify all the documentation like tax certificates, rental logs, TAT payments, and then there is a further check that we now have to implement because of conditions from the Planning Commission because of the special permit interface with the certificates. Why this is somewhat problematic for implementation is that, the initial renewal deadline that was fixed in 864 and 876 has remained and so we have a bubble but I would guess about eighty percent (80%) of the other renewals request come in right before July 31st and then we have to go through a verification process subsequent to that. It is certainly is an episodic situation versus something that is like a Class I permit that comes over the counter and we continuously manage it. On the inspection enforcement side, we are able to inspect units that are up for renewal to verify land use violations and what we have been trying to do is setting up a system that takes previous complaints and cross checks them with renewals, we are not at that point yet but that is where we need to go. We need the information from the renewal process to drive cases for inspection and then we also need to provide evidence for action which leads to contested case hearing and fines.

As I mentioned earlier we do have that issue of that annual "bubble of renewal." I had to take my staff and we had to literally shut everything down between July and October to process the renewals because of the cross checking that is required. What we are trying to do is...because we have the withholding authority, create processes that we have been collect information from our partners like flood, like building, like health and part of this was driven because the Federal Emergency Management Agency wants us to have better coordination with the flood program because they see it as a way of more robustly enforcing the Flood Ordinance but in order to do this the due process hearings require significant time and financial investment, and it becomes even more substantial as the cases become more complex. As the complexity of cases become more complex, we need a case management system and a filing system that is strengthen to ensure that what we are presenting before either a Judge or a Hearings Officer is accurate. So, we have to have that integrity of information. The challenge with implementing these

processes is that like anything we are dealing with a constitutional property right which requires due process and that is the hallmark of the American democracy is due process for individuals. We need to ensure that a due process hearing is provided for civil and criminal enforcement before and we have to have the evidence for that. So, what do we need to do in order to do that? We need to have the proper Administrative Rules and procedures, we need to also look at also having the Rules apply for when we have fines, and we need defensible evidence to bring before the Hearing's Officer or even the Court. The difficulty there is...and this becomes somewhat of a resource issue is that not all evidence is the same. Some evidence is missing a deadline either the form is there or it is not, or you did not submit a form, either it is there or it is not versus something that relates to the actual facts on the ground which is things like a rice cooker, hotpot, or microwave in a dwelling downstairs a part of the upstairs dwelling that is clearly evidence of a multi-family use. These are the things that have been historically problems with enforcement in general and I put the phrase "cat and mouse" there because it is essentially one of those cat and mouse games that we have to be ahead of the curve on.

Why are contested cases labor intensive? Why is my Department struggling here? I will be very candid, we are struggling in managing contested case hearings. Well, in order to run a sufficient contested case hearing, we have to have a Hearings Officer to support the volunteer Commission. We have to have someone to package the information. We also need an Attorney for the Planning Department and we need an Attorney for the Planning Commission. We also need staff that is trained to provide what is equivalent to a Police Detective, the detective type of work that the Attorney for the Department can use as part of the package to win the case. We want to win the case. These contested case hearings are conducted like a trial before the Commission or the Hearing's Officer, there are pleadings, motions, evidentiary hearings, there is recommendation from the Hearing's Officer, it goes to the Planning Commission, and then beyond that it can also be appealed to the Fifth Circuit Court which requires Attorney time.

What have we done? This process is inevitable if we have to use it and we need to strengthen it. So, what we have done so far is pass two (2) sets of rules in the past two (2) years to actually streamline enforcement by allowing the Commission to do certain things. We also passed rules defining the difference between how to define a kitchen as well as multi-family and single-family uses. What our strategy has been is to focus on this low hanging fruit where the evidence is easily gatherable and defensible. We are focusing on things like missed deadlines, missing forms, things that we have handled and available for us to bring before an Officer because if a Hearings Officer says "is the form there or is it not," it is very difficult for a lawyer on the other side to say "the dog ate my homework." That is the kind of stuff that we think is more reasonably defensible for us. What we have done is we have begun the process of issuing cease and desist letters for those certificates that have not come in for renewal as you mentioned in the previous conversation the ripeness for fines issue also comes up where we need multiple notices. Since Ordinance No. 904 that was enacted in August of 2010, we had to handle sixteen (16) contested case hearings since enactment. We have seven (7) currently with denials with six (6) hitting the Circuit Court, three (3) pending disposition, and we have nine (9) hearings on denied renewals that are currently pending that two (2) of those just came in within the past few days. We are doing things to enforce and we are teeing up the process for enforcement through contested case hearings. Beyond that because people have an appeal, we have additional twenty-six (26) cases that we are building the case for fines and actually looking at issuing fines because they missed the renewal. Because they missed the

renewal, we are saying "you abandoned your use therefore because you have abandoned your use, you can no longer renew and if you are still operating and we find you operating then we can issue you a fine." As this body did pass, the fine can be up to ten thousand dollars (\$10,000) a day.

With respect to try to strength our Department. We are strengthening our Department by centralizing, overhauling, and reorganizing our paper management system. Our goal is to get this done by July. We are also engaging in putting together a digital database because the whole database was previously used on the online database system and I know many of people have provided complaints about using a web interface for our database but there are limitations for it and so that is why we are creating a new database for allowing us to monitor and catch non-compliance to the renewal process. We are standing up the contested case intake system because now it becomes a fact of life that we have to manage these contested case hearings efficiently and accurately. We also started discussions and as I mentioned before and Justin has been so kind as to already engage in training with our staff inspectors to beef-up their skills for field investigations. We are now copying our zoning compliance letters to the Prosecutor's Office for information purposes.

From a manpower standpoint, we have reassigned our Long Range Planner to dedicate half of her hours to assist the TVR program and that was back in 2012. We have added a temporary Contested Case Hearings Clerk to support TVR contested case hearings initiated by the Department and then just Monday we have started Supervisory Vacation Rental and a Special Management Area (SMA) Planner to help oversee these processes so that we are following the process accurately.

There are things that we are still probably not aware of and so what we are trying to do is test solutions for this. What we are going to do is create a multi-departmental team where we have the Planning Department, the County Attorney's Office, the Flood Office, and the Health Department to focus on egregious cases and we want to take a sample case and drill down on a sample case to look at presenting it before a Hearings Officer or Judge or levy a fine within ninety (90) days. I think this will help us look at where our weaknesses in our system, filing, communication, and work product from a cross-agency standpoint and then use that case to try to debrief and figure out whether changes need to be made to rules, our processes or if we need to look at another way of handling our caseload. In all, we are enforcing. We have our strategy. We have been focusing on low hanging fruit. Certainly I understand the public's desire to want more robust enforcement with respect to a lot of the egregious cases and we are going to try to figure out how we can efficiently manage these more advance cases so that we can better address these. I think it would be helpful for everybody to understand. Other than that, that is my presentation.

Mr. Bynum: I will start with a question and we will go around the table if there are other questions. Thanks for the presentation, Mike and a lot of these issues are really complex, yes?

Mr. Dahilig: They are.

Mr. Bynum: But some of them... or some of the concerns that I have are pretty straight forward. The law is very clear that there was an expectation that when people apply for a permit or non-use certificate that they will

demonstrate use in the year prior to March 7, 2008 through GE forms, tax returns, reservations records, and what we are hearing is that in many cases those documents do not exist in the file. Is that accurate?

Mr. Dahilig: In looking through the files and as I mentioned we are going through this process of file reorganization and consolidation. There were mistakes that were made and so our job is to ensure that mistakes like that do not happen.

Mr. Bynum: My concern without going into too many details if individuals... and that is really straight forward that is not as complex as needing to inspect to find out if there were other violations. It is like, was this submitted or not as you said in your presentation.

Mr. Dahilig: Right.

Mr. Bynum: The other requirement is an affidavit from the applicant saying "yes, I had all of these..." They are attesting to that, right?

Mr. Dahilig: That is correct.

Mr. Bynum: Are those present in all of the files?

Mr. Dahilig: From what I understand I cannot say with a certainty that every single file... all six hundred and forty-four (644) has an affidavit in there. We are in the process of again trying to consolidate these materials and can then identify that if there was no affidavit issue that we flag it and we figure out what to do.

Mr. Bynum: Is there a form? The person who processed this application, is there a form that says "this document – checked," is there?

Mr. Dahilig: At this time there is a checklist. There is not an actual form. It is a good idea to put in a form for our staff members to use.

Mr. Bynum: To me, we would not have been more clear as a Council that we really wanted to see this documentation that the prior use existed. I am concerned that if we issued permits where that prior use was not even documented in any fashion especially if there is no affidavit then how do we come back on the renewal date and say "hey, show us the stuff you did not give us in the first place?"

Mr. Dahilig: Correct.

Mr. Bynum: Now, if there is this affidavit and things were not provided and the person was fraudulently stating things then I think we have a leg to stand on but if we never even asked for the documents and there were no attesting, I think we created new legal problems for ourselves when we knew we were going to have legal issues that we had to deal with.

Mr. Dahilig: The requiring of the affidavit certainly in doing a back look at the files and this was a requirement that persisted going back to the first, I guess, the first stages of this Ordinance back to 864 and 876 that there could have been definitely misrepresentations in those affidavits. There has not

been a comprehensive, as I am aware, vetting of those affidavits other than a processing and recognition that it is in the file. I would not represent before the Council that a form... a hundred percent (100%) of the forms there because right now we are trying to consolidate the material and do that type of cross referencing and checking to ensure that everything is accounted for.

Mr. Bynum: So, I will close this particular question with this, if there was a permit granted and there is no documentation of prior use and/or there was no documentation of the affidavit that is required by the law then a mistake was made, at least right?

Mr. Dahilig: Right. If a mistake was made then we will need to figure out how to fix it.

Mr. Bynum: Right and I am afraid that it may be difficult to fix it when we issued the permit without the required documents when that was our *kuleana* to make sure those documents were there.

Mr. Dahilig: All I can say Councilmember is that we may have to give it the "college try" if there are those distinctions that are made. We have to be able to identify them, put them in buckets, figure out strategies on these things but right now we are just in the beginning of the processes to even identify where those mistakes have been made. I think anecdotally we are aware of some of these things but I think what everybody is looking for is hard numbers. They are looking for hard situations and an inventory of some of these things and that is what we are trying to get to.

Mr. Bynum: You are right. We want to know what the scope of this is. Is it a few mistakes or is it widespread and so... as a Councilmember who authored that Bill and worked very closely with you, the County Attorney's, and the Planning Department to make it as strong as possible, if just the simple things, required documents were not done, I am really upset about that.

Okay, it is what it is and we have to move forward and deal with the issues we have but this is from Councilmembers who were very proactive saying "what are the resources you need to accomplish this and we will give you two or three more people if necessary." I believe the budget in this year coming from the Administration cut the funding for Administrative hearing people, does that make any sense?

Mr. Dahilig: It makes it more difficult.

Mr. Bynum: Thank you. Other questions?

Mr. Hooser: Director, thank you for coming and I very much appreciate the presentation. It was the one time... I do not want to say "it was a long time coming" but it has been a few months but it is part of what I have been seeking. I really appreciate the time and effort. I want to say your apology that you opened your discussion with and I think that the... I will speak for myself, my discomfort was due to surprise and the message that was carried by the County Attorney. It was not from you, it was the surprise of you not being here and the message that was delivered and so I appreciate you taking responsibility for that and stating that upfront. Thank you. I do not feel it is appropriate for me to... I

think today's agenda item is about moving forward, what are the Planning Department and the Prosecuting Attorney's plans for enforcement. I do not want to pose legal questions of what may or may not happen as result of bad decisions that were made or not made and I think we are going to discuss that later, maybe next week on another agenda item. I want to focus on the moving forward and I think you have laid out some really good direction and again I appreciate that and appreciate the staff and the work in terms of the bubble and the work that was needed. My question is specific to the slide that talked about... focusing on egregious situations and ninety (90) days and there was a formation of a team. My question is has the team been formed, has the ninety (90) days already started and could you talk a little more about that?

Mr. Dahilig: We have already talked with the Flood Coordinator, County Attorney's Office, and the County Engineer on this matter. We have set (inaudible) on the Health Department and once we are able to get the team galvanized then we put ourselves in the ninety (90) day plot to actually go ahead and run this thing up the flag pole. It has not started yet. We have actually looked at some of the files specifically the files that are related to the online discussions that Joan has brought forth. We are looking at a case that we can win on. I think that is what our intent is. We want to focus on those things because a lot of Joan's work is something that can be built upon, it is something that we can cross reference and use to try and fill in the gaps and figure out what types of challenges to do expect. We would expect any of these sixteen (16) are going to "lawyer up" on the other end and that is fine. From our side, we need to test our processes to make sure we can win cases and I think that is what we are planning to do.

Mr. Hooser: Can you be a little more specific on the ninety (90) days?

Mr. Dahilig: Yes.

Mr. Hooser: So often other people that are in that same chair talk about "it is going to happen." Can you give us a little bit more of a definitive answer when the ninety (90) days might... the clock might start ticking on whether it is really a hundred and twenty (120) days or... what are we really talking about?

Mr. Dahilig: When I say "ninety (90) days" again, once we get our team together and we have identified the case then that is when we will give ourselves the time to do it. We are almost there in terms of being able to form a team, so I would not expect that the formation of the team is going to take a year. All except one person is in-house at the County so it is not... one of the reasons why we are waiting is because our Flood Coordinator is getting married and so we cannot participate without her mind at the table but once we are able to form that I think in the next two (2) to three (3) weeks, we should be able to start.

Mr. Hooser: Okay, so...

Mr. Dahilig: I can certainly send a memorandum over saying "here is our clock and we are starting now," if that is...

Mr. Hooser: So, a hundred and twenty (120) days from now? I do not want to put words in your mouth but I would really like to have some kind of line somewhere that something is going to happen by this time.

Mr. Dahilig: Okay. Given that we... (Inaudible) I would suspect us being able to form this team in more than thirty (30) days that is certainly fine.

Mr. Hooser: You mentioned the anticipation of people "lawyering up" of course resisting or fighting if you would, the County's Department to enforce... or the County's move to enforce, I would think that when the County does become aggressive or more aggressive in enforcing basic laws in the permits that in addition to people "lawyering up" there will be other people who say "I am out of here, I am going to give up my permit, I do not want to deal with this." Do you think that is a reality also?

Mr. Dahilig: It is actually more real than you think. When we actually sent out those letters saying "you are not eligible to renew because you missed your 2012 deadline," we had a number of people come across the counter and say "I am forfeiting it and what do I have to do to forfeit the use." So, there is a gradual reduction just by the fact that there is higher tax rate, the economy is not as good, better things that placed financial pressures that are outside of the bounds of the zoning code to then have that person make that decision to forfeit. We tell them "okay, if you forfeit it and you can never have it back." So, it does happen.

Mr. Hooser: Okay. It is reassuring and good to hear. My final question would be that, there really two (2) issues that we are talking about here – what happened in the past that apparently lead to permits being issued with the complete information or for whatever reason and then how do we move forward to enforce the Ordinance in the future. Again, I think you gave us a lot of good information, I thank you for that and I want to see it come to fruition. Thank you.

Mr. Bynum: I want to note that we are at 12:30 and recognize Councilmember Kagawa.

Mr. Kagawa: Thank you, Mike and the Planning Department for showing up. The last time when I was present and you were here we heard how, Justin said that he would like to have that Attorney to specifically work on that along with some other business in helping to solve this problem. You indicated as well that you are shorthanded in this area and my comment was that I wanted to see some success in handling these matters prior to adding the body. I want you to give me the confidence that we can do the job on both ends, the Prosecuting side and the Planning Department and I had the nod of the head the last time that that was doable. Are you moving in that direction since a month ago or so?

Mr. Dahilig: Yes. We made a lot of strides in being able to have our systems be better strengthened. Like anything, the foundation like a foundation of a house, a foundation of enforcement is having good record keeping. That is what we have done over the past month or so is tee up ourselves to have that integrity. The other thing that we have done is we have been more, as we scheming the files and right now we do not have hard numbers in the sense that I can go to computer, everything has to be hand counted. Based on what we have been able to scheme in our low hanging fruit batch which is people that have not renewed, we are getting responses back through appeals which means that we are getting traction in being able to hold people accountable, people are pushing back

unless they take us seriously and those that have not responded to us, we can use fines for. That is where we are making progress. It is not the robust program that I think everybody would like to see with respect to some of the things that Joan has pointed out in her blogs but we are enforcing the Ordinance to the best as possible.

Mr. Kagawa: Okay. I know this is a tough job. TVR owners have become very well adapt to utilizing the loopholes or whatever that we have and taking advantage but I just know that it has become a problem that we got to try and attack or it is just going to spread even worse. On that note, are we putting better controls in now going forward to avoid that fruit basket getting even fuller?

Mr. Dahilig: The controls... we are standing up right now because there were certain controls that... and this is what we needed to do but we have not been able to do until now is have an accurate filing system that tracks when renewals either are in or are they missed. If our goal here is to hold everybody accountable on every single point, it is like walking a very fine line. The minute you step off, we have to be able to catch you once you step off that one time and not get back on before we catch you stepping off. That is what we are doing. We want to have that ability to do that more efficiently and more accurately so that we are holding people and we can give a hundred percent (100%) success rate on holding people accountable.

Mr. Kagawa: Okay. Thank you.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Bynum: Anyone else? We are at 12:30 and it is time to break for lunch. Our intention is to go to the Committee Meetings at 1:30 and to reconvene this Special Council Meeting at the conclusion of the Committee Meetings.

Mr. Kagawa: If I look at the Committee Meeting, most of the items are going to be deferred. I think the only one that is going to take some significant time – maybe half an hour or hour... if I estimate is the Host Community Benefit item. The rest looks like... I know Mr. Arakawa wants to testify but other than that I do not think we have a... maybe a half an hour.

Mr. Bynum: That is nice to hear. I did not know that some of those bills were going to get deferred because they could take considerable time but it is our intention to recess now, do the Committee Meetings and then call the meeting back to order. As Mr. Kagawa points out, hopefully we will not be here too late today. This meeting is in recess until 1:35 p.m.

There being no objections, the Council Meeting was recessed at 12:38 p.m.

The Council reconvened at 3:43 p.m., and proceeded as follows:

Clerk: We are back on C 2013-208.

Chair Furfaro: Mike can you acknowledge for me, was your presentation completed? Rules are suspended.

There being no objections, the rules were suspended.

Mr. Dahilig: Yes, Mr. Chair.

Chair Furfaro: Members, questions or anything to be directed at the Planning Director and his staff?

Mr. Rapozo: Thank you, Mike for being here. The renewals that you talk about, the renewals are based on the prior year use, so when they come in for a renewal, we are just checking to see if there were in operation the year prior?

Mr. Dahilig: That is part of the main requirement that we look at is if they were operating the year prior plus they have been paying GET...

Mr. Rapozo: In addition to all of the other requirements?

Mr. Dahilig: That is correct.

Mr. Rapozo: So once they get the original initial certificate, the Non-Conforming Use Certificate, however they got it even if they... whatever... there is no mechanism in place at that point for the Planning Department to validate their original qualification, if you will, for the NCU permit. In other words, let us say they got the initial permit because they defrauded or lied on the application, when they come in and renew, you are just looking at the prior year so obviously we would... if they met all the criteria they would be...

Mr. Dahilig: There is actually one circumstance that we have come across with respect to defrauding and I would be hesitant to actually discuss...

Mr. Rapozo: Oh no, I am not asking for that. I am just saying that we would not know on a renewal. There would be no mechanism in place in the renewal process because they are not... do they submit a new affidavit again?

Mr. Dahilig: No.

Mr. Rapozo: Right, so that affidavit once submitted pretty much is...

Mr. Dahilig: Right.

Mr. Rapozo: Okay. That is all I have for right now.

Mr. Hooser: I believe in your presentation, Director, you mentioned that part of the process is making sure the file is complete.

Mr. Dahilig: Right.

Mr. Hooser: I was envisioning that as being...it is original application, you know forward. So, if it was missing information key to its original approval then that would be noted at that time.

Mr. Dahilig: As part of the process of relooking at every file, that is what we are notating and identifying as... the first priority was to ensure that everything was centralized into one (1) location so each file did not have a mirror file under another name somewhere else or did not have a document that was in a box filed under something else. So, now that everything is all in one (1) place, what my staff is currently going through one by one is identifying whether there have been these gaps from the record as to meeting the requirements or not. That is the process that we are going through right now.

Mr. Hooser: So, if an application is up for a renewal and you are looking at the file and the original file is incomplete or otherwise inadequate...

Mr. Dahilig: Right.

Mr. Hooser: That incompleteness and inadequacy is addressed prior to moving forward with the renewal?

Mr. Dahilig: With respect to incompleteness, we have not figured out a way to address that. In terms of inadequacy, as Councilmember Rapozo mentioned there is a circumstance right now where we are looking at an affidavit that was in our view fraudulently submitted to us and we have taken steps to fix that problem. It is currently under Administrative litigation...

Mr. Hooser: Right, but if it was a circumstance where the file should have had proof of prior use and there were no proof of prior use.

Mr. Dahilig: Right.

Mr. Hooser: What would the Department do in terms of the renewal?

Mr. Dahilig: That is a good question and I do not have a good answer for that. It is something that I think is something we are scoping as identifying from the record now that we have everything complete whether there are these gaps in meeting the requirements. I think we are going to have to go through a process of discussing options with the County Attorney's Office as to what could be the weaknesses if we choose to challenge the initial issuance as appropriate in the first place. I think that is something we should look at if there was not stuff that was not in the record and whether we are able to enforce at all.

Mr. Hooser: Is it correct to say that the permit will not be renewed until those questions are addressed by the Department and the County Attorney's Office?

Mr. Dahilig: It is something that we are rushing to get to because the bubble is coming to us. If we are able to flag these circumstances and provide a scoping for the County Attorney as to what the amount and the breath of these issues are then it gives us a way to actually respond to this by the time the July 31st deadline comes around.

Mr. Hooser: Right. I guess I am trying to get my arms around this question that we all are.

Mr. Dahilig: Okay.

Mr. Hooser: And so I just want to make sure, it seems like it would be inappropriate to renew a permit that had unresolved issues.

Mr. Dahilig: Right.

Mr. Hooser: And so what I want to hear from the Planning Director is to say "we will not renew permits until these issues are resolved." Where it is getting an opinion from the County Attorney or whether it is getting the paperwork in order rather than just let things go forward the way they are. So, either the Planning Department has a policy in place and we are not going to worry about this... so, can you say that?

Mr. Dahilig: In a nutshell would be an appropriate means for us to follow up with.

Mr. Hooser: So, you are not going to renew permits if there unresolved issues – unless you make a conscious decision to work with the County Attorney and develop policies along those lines, I guess.

Mr. Dahilig: That would be the first avenue for us once we get our arms around the scope and the breath of the issue...

Mr. Hooser: Right.

Mr. Dahilig: ...seeking what type of legal solutions we can use to address that. Certainly because the way that the Ordinance is written there is no actual deadline for response after the July 31st. You know how we have mandatory response deadlines, mandatory approval deadlines – the TVR Ordinance actually does not have one for certificate renewals so certainly we can inquire and do the due diligence necessary to answer the question and I think you are posing is great question for us to look at.

Mr. Hooser: So, you do not have to renew them?

Mr. Dahilig: Immediately.

Mr. Hooser: Okay.

Mr. Dahilig: Yes, not immediately.

Mr. Hooser: And they have to cease and desist on the period that they are...

Mr. Dahilig: That, I would probably want to check with the County Attorney's Office with respect to how we go about something like that and we will see where it goes from there. I think getting the understanding from them as to what could be the legal benefit with legal risks of this which I think is a great idea, we can certainly look at with the Attorney's Office.

Mr. Hooser: Before lunch I complemented you on the presentation and I still complement you on that but my question at that time was about ninety (90) day period.

Mr. Dahilig: Yes.

Mr. Hooser: During lunch the more I thought about it and the more that bothered me that I did not really get an answer on that, so when we start straying into areas where there are less and less definitive answers, it is more troubling.

Mr. Dahilig: Okay.

Mr. Hooser: Partly because it was on the presentation, it said ninety (90) days.

Mr. Dahilig: Right.

Mr. Hooser: And then when I asked, it was "well it will be as soon as we can." I kind of accepted that and kind of allow a hundred twenty (120) days and then still could not really get a solid affirmation from you that... and because you put it in the presentation is the reason I ask.

Mr. Dahilig: Okay.

Mr. Hooser: And so I ask you again, can you give us something that we can put on our calendars to know that action will be taken on some of those more egregious situations.

Mr. Dahilig: Just to address this timing issue that is in the last slide of my presentation. I would say September 30th, I am looking at my calendar here and it is something that I will have my staff pencil in as a goal for the team that we can get something teed up again either submittal to the Planning Commission, submittal to a Judge, or issue some type of fine notice by that point. We will use that as a means for us to dissect and understand the advanced process it takes for us to deal with these egregious violations because I think as an icebreaker ship, if I can use that analogy that is what we would look at this being.

Mr. Hooser: Okay, thank you.

Mr. Dahilig: Sure.

Chair Furfaro: Mr. Bynum before I give you the floor, Council Vice Chair Nakamura has a follow-up question.

Ms. Nakamura: Maybe this is a County Attorney question is do we actually have the authority in the current law, renewal law to hold up the renewal if there are issues - unresolved issues from the initial application.

Mr. Dahilig: That I think is the reason why I suggested an Attorney opinion might be appropriate to do that...

Ms. Nakamura: Yes, why do we not prepare that question and in the same correspondence to the County Attorney ask if we do not have that authority, what needs to be changed in the current law to give us that authority.

Mr. Dahilig: Okay.

Mr. Bynum: How many permits have we issued?

Mr. Dahilig: That – I do not know yet. As we are counting, that is one of the numbers that we have not quite gone to counting yet.

Mr. Bynum: In your presentation you say you oversee management of six hundred and forty-four (644) files.

Mr. Dahilig: Right.

Mr. Bynum: What is the six hundred forty-four (644)?

Mr. Dahilig: We have six hundred forty-four (644) unique files in our possession.

Mr. Bynum: Was that one for each permit?

Mr. Dahilig: The way we organized it was one for each permit number. Now, we issue a number, from what I understand and numbers were issued in the past regardless of whether a certificate was approved or denied. So, there have been six hundred forty-four (644) unique numbers that have been issued by the Department.

Mr. Bynum: So then our total number permit is less than that?

Mr. Dahilig: The total number of permits would be less than that.

Mr. Bynum: And you said the Ag permits were... I had sixty-six (66) in my brain and you said a different number like fifty-eight (58)...

Mr. Dahilig: Let me look at that again. We had fifty-six (56) was the number that I had cited that we had processed, we have given unique numbers for special permits through the Planning Commission. In terms of the actual amounts that have been approved and then subsequently maintained, we are still getting that data but we have had fifty-six (56) individual numbers that have been issued.

Mr. Bynum: You said the first thing you did was get all of the documents into one place; that is done right?

Mr. Dahilig: That has just been completed.

Mr. Bynum: Just been completed?

Mr. Dahilig: Yes. Each of the files has been also organized where you open the file and all the inspection materials have been organized chronology on the left side, all of the permitting stuff has been organized on the right side. Each of the folders are tagged based on the renewal per year.

Mr. Bynum: Because... and I am sorry I did not mean to interrupt but Councilmember Hooser's question is the question... and I will get back to that in a second. So, you get these files all in one place.

Mr. Dahilig: Yes.

Mr. Bynum: The questions that I asked earlier and the ones that I am focusing on although there are a lot more is just did these people submit these prior use... any prior use documentation? If the answer is no... so, you should be able to give us that answer either in Executive Session fairly quickly. It does not take that long to go through six hundred and forty-four (644) and say does the documents exists or they do not.

Mr. Dahilig: And that is what we have to do by hand, we are going to have to... it is not a problem for us, we can find that number and I have already talked to my staff about looking at things like the affidavits and the other issues concerning the initial application. We can go by hand and make these... we are able to do it on a file by file basis, go in there, look through the file, and say yes or no. We can make that tell that way.

Mr. Bynum: Those are a population that are going to come for a renewal and the question that I think Mr. Hooser was asking is if we see there is no documentation, can we require it now? Can we say "you signed an affidavit but we did not see the documentation provided to us prior to this renewal."

Mr. Dahilig: Right.

Mr. Bynum: I do not accept an answer right now but that is the question right here. Whether we created an even bigger mess by not getting those documents or if we still can hold the applicant to their attesting that they run it.

Mr. Dahilig: There is one situation where because there has been issues with the attesting we have actually taken some legal action on it already.

Mr. Bynum: Now, I have a sense after your presentation today what the work is that you need to do and where it is going. You mentioned in your timeline that you have Administrative fines now as a tool, right?

Mr. Dahilig: Right.

Mr. Bynum: Did we apply any of those yet?

Mr. Dahilig: We have collected approximately... we collected forty-five hundred dollars (\$4,500) so far specifically related to the TVR program. As I mentioned in the PowerPoint I believe it was twenty (20) something that are right for fines and so what we need to do is ascertain that they have not cease and desisted and if they have not cease and desisted, we are able to levy the fines. I know there was a bit of discussion with the Council a couple months prior concerning the plurality in the State law of notices and so because you issued one notice already, the second is the red for fine notice and we have a number that already teed up. If we find that they have not ceased and desisted, we are able to go and order the fine at that point.

Mr. Bynum: Okay, let us take one step forward. You assess this fine.

Mr. Dahilig: Right.

Mr. Bynum: Now the owner just does not pay the fine.

Mr. Dahilig: Right.

Mr. Bynum: What is your next step?

Mr. Dahilig: Our recourse is then to... if after a certain amount of time, per the rules of the Planning Commission, they do not appeal my decision to fine them then we can go and through a lien attach it to their property through a Court order.

Mr. Bynum: Which is a Civil Court matter, right?

Mr. Dahilig: Yes, which essentially is an amount due to the County of Kaua'i.

Mr. Bynum: That would require the assistance of the County Attorney?

Mr. Dahilig: That is correct sir.

Mr. Bynum: At what circumstance would there be... is there a criminal law broken if people fail to cease and desist?

Mr. Dahilig: That is a good question. I would probably have to refer that over to the Prosecutor.

Mr. Bynum: We can add that to the list of questions because the Prosecutor's on the agenda today too, so I trying to determine under what circumstances is the Prosecutor going to get involved, right?

Mr. Dahilig: Right. I would also add too though that as part of our procedures now, these cease and desist letters are being copied over to the Prosecutor's Office. We are not asking for affirmative criminal prosecution but for information purposes if there is an ability to run based on the evidence that my guys have collected that is certainly within the Prosecutorial discretion of the Prosecutor.

Mr. Bynum: Thank you.

Chair Furfaro: Mike, I want to frame a couple questions that are critical because I appreciated very much the briefing that we had from Mr. Jung today. I thought he did a very good job in making me current on the law and procedural issues that we face. I believe we are coming across a critical date on July 12th in Court. I would also like to say that I would like to give us some thought to getting regular briefings knowing that renewals as Mr. Hooser pointed out will be due to us early July. The other critical date of July 12th followed by the fact that perhaps we can get on these legal issues a briefing to include the Prosecutor's Office

on the last Council Meeting of July which is the 31st followed subsequently by another session the last Council Meeting in August on the 28th to understand if we are moving forward with any of these ceasing business commercial activity, where do we stand and then a final briefing on the status of your progress in this attrition for lack of any other term by the end of September which would make that Council Meeting on the 25th of September. For us getting a better idea on the progress that we have made in the next ninety (90) days and I think Mr. Hooser made reference to that as well on what has not been renewed, what are some of the outcomes in Court process, and then have a better understanding of exactly where we are at based on all the variables and Mr. Jung did a very good job today. I have mentioned his name twice today, I better be careful with that. He did a very good job in briefing us on the legal parts and then make a decision on this investigation after those ninety (90) days. That is what I am leaning to right now. Can you deliver in ninety (90) days a better understanding of the outcomes of these actions?

Mr. Dahilig: We have to.

Chair Furfaro: I want to quote you.

Mr. Dahilig: Yes.

Chair Furfaro: "We have to."

Mr. Dahilig: Yes.

Chair Furfaro: Okay. I also want to thank you for the apology this morning from our last session. It was well received. As I laid this out for the next ninety (90) days getting us to September 25th, you will put all of your energy and the team that you have here on getting us to a document that will leave us a real understanding of what I am going to use the term "audit trail" on these applications and the status, you will be able to get us to that point?

Mr. Dahilig: It is something for us to get to a point of good enforcement that we have to get to. It would be irresponsible for us to move forward on cases if we do not have the evidence and the backup to do it. At least what you are suggesting Chair is along the same lines of the types of things that we have to do to ensure integrity of the process.

Chair Furfaro: Well, I am leaning that way if we defer this till September 25th to give you the time to execute the items and the conditions that you said that we have to deal with it by law.

Ms. Nakamura: One of the concerns that I have is that in this recent budget process, we made a pretty substantial reduction to your line item on for the Public Hearing Officer's and that whole process. What I am concerned about is if we are to make progress on the enforcement end, we need to find additional resources moving forward on what is the best way to fund that function within County government? I think that it involves not just the Planning Department but the County Attorney's Office and the Mayor's Office to really look at how do we identify where the resources can come from and what is the best way to use the resources to get the results we need and move this process along.

Mr. Dahilig: I understand.

Ms. Nakamura: That is another follow-up that I would like to have some feedback on from the Administration.

Mr. Kagawa: Mike, looking at the TVR program operations after Ordinance 876 No. January 2009 and it says, "nine (9) week window for staff to conduct four hundred and thirty-five (435) inspections in all."

Mr. Dahilig: Yes.

Mr. Kagawa: Is that four hundred thirty-five (435) different TVR units.

Mr. Dahilig: Based on the hand count that was what happened back in 2009 that was the inspection reports that were filed right after 876 was passed.

Mr. Kagawa: Just thinking about that volume upon a small staff just... it looks like it was pretty unrealistic to think that we could have only nine (9) weeks to do all of that and have everything all in place.

Mr. Dahilig: My staff did the best they could. I am looking at this not being in the mix myself but looking at it from paper trail and given what the calls were back then, what was asked of them were monumental and they did the best they could.

Mr. Kagawa: The next question is going forward a lot of the job is trying to see what we have in the files and what may be missing?

Mr. Dahilig: Yes.

Mr. Kagawa: And then trying to see how we remedy whatever is missing?

Mr. Dahilig: Yes.

Mr. Kagawa: Okay. I just want to try and understand what we are up against.

Chair Furfaro: Mike other than taking the advantage of having your inspectors in the audience with building staff people, the County Attorney's Office, the Prosecutor's Office and so forth, what more if we would go with this September 25th plan with the Resolution coming back on October 9th, what more could I say to them that this is the highest priority for those Departments dealing with inspection, building, prosecution, and legal advice to the Planning Department. What else could I say to help you encourage the value of *kōkua* amongst the Department's to help each other get this resolved appropriately, well documented, and certainly those that do not meet the criteria for renewal, they go into this kind of cease and desist mode. What else could I say?

Mr. Dahilig: I think you have said it. My partners in this – Larry... and I know he is watching this as well as the Administration. This is a hot priority. It is something that from a sweat equity standpoint, I am expecting myself to invest a lot of my personal time on it beyond the close of business. I think a lot of... what it is, it is going to be sweat that we have to look in to on this and the

partnership, I have already been offered we have been discussing the “super team,” I do not know if we want to call it that but there has been a lot of *kōkua* there – people have been willing to pitch in and I think a lot of... especially the flood interface Maile has been very open to cooperate with us and work with us and figure out a system that works for both of us. We hear it and your words reinforce it Chair and I think that message is very clear to everybody.

Chair Furfaro: Well there is another part that I want to say to what you described as the “super team,” they should know from the Council Chair, there is no kryptonite in this business – stay focus, high energy, and get it done. I think that is the only way I could actually ask that we have those dates for critical reviews in Executive Session and we look at this Resolution coming back to us on October 9th because either we are satisfy for what we hear legally and the action taken or we are not by the 25th of September. You need the help from a “super team” here. This is important to the stewardship of our island and that people do not abuse the understanding of why we went with this Ordinance to begin with. That is my message here.

Mr. Dahilig: I think the fact that there is an accountability factor here for all of us to own up to in October that is a fair expectation for us to try to meet. Like I said we have a goal, we are putting the people together, and that is what we need to deliver on.

Chair Furfaro: In closing I want to say if we cannot succeed with this deferral until October 9th, I will do my best to follow-up on Council Vice Chair’s message to the Administration. If you need some financial resources, along this line, I will personally speak with the Mayor and Mr. Heu to make sure we find or delay any hires in the new budget that will help you with those resources. If we have to look for a hundred fifty thousand (150,000), we got to do this Mike. We absolutely owe it to our community.

Mr. Dahilig: I understand.

Mr. Rapozo: If a renewal comes in and your files, let us say the file is missing proof of TAT or proof of GET, how much access does the County have to get that from the State?

Mr. Dahilig: That is a good question. Usually we just receive the printouts. I do not know if we had ever self initiated an inquiry with the Tax Department with the State on getting the certifications.

Mr. Rapozo: Is that public record?

Mr. Dahilig: We do Compliance Express for procurement so I would suspect that there may be something there but I do not know. I can follow-up on, Councilmember.

Chair Furfaro: I would really like to say after my plea here to look for a deferral until October 9th is also condition of the fact that after we get through the month of... the July 1st renewal, every final Council Meeting of the month July, August, September will be posting a legal briefing on the status of some of these resolutions we need to achieve. That would be a condition along with the deferral, I would hope I could get one of my colleagues to make the motion to

defer this resolution until October 9th. The other conditions will follow through correspondence from myself.

Mr. Dahilig: If I could clarify Chair, the renewal deadline is July 31st and so we will be able to have...

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: But I would still like to have that briefing from the legal prospective on what else is happening in the course on this TVR piece with that deadline – that Court date we have in July.

Mr. Bynum: I am not clear on what Resolution you are referring to.

Chair Furfaro: This Resolution about initiating 3.1.7.

Mr. Bynum: That is not the agenda item today, right?

Chair Furfaro: No but what I am saying is, it is conditional on knowing that we would defer action on that Resolution until we have given them the ninety (90) days.

Mr. Bynum: Can I address that?

Chair Furfaro: Yes.

Mr. Bynum: I appreciate all of the things that Mike and the Administration that everybody is saying but I am not convinced we should not do an investigation because this is very serious, it is very significant the things that have or have not occurred and we have passed this law in 2008 and we revised it to deal with problems. It is like "too little, too late." You come up and say we are going to do all of these things, good, you need to do all of these things but if these permits were given and people never even showed the fundamental documentation, all of this do not work for me to not want to get to the bottom of this quickly and with the authority to find out what happened. At this point, because you brought it up, I am still not comfortable that we should wait...

Chair Furfaro: Fine that is your choice. I am just asking that on today's action is to receive this and what I am asking as I laid it out that is the only action we have today but to get through what I got in legal briefings today, I would like to say at the time that we deal with this Resolution, we deal with it on October 9th giving you ninety (90) days. If I do not have the votes, I do not have the votes.

Mr. Bynum: How can we vote on that Chair when it is not on the agenda?

Mr. Hooser: I am confused. I thought I heard a recommendation from the Chair that we defer this issue and now I hear that somehow there is... so what I think I am hearing is that you want to tie the Resolution that is scheduled on next week's agenda, a deferral of that Resolution to a decision that we are making today? I think that is what I am hearing you say?

Chair Furfaro:
floor right now.

We have a motion to receive this item on the

Mr. Hooser:

I did not hear the motion.

Chair Furfaro:
Clerk.

I thought we did. May I check with the

Clerk:

The motion to receive and the second.

Chair Furfaro: Yes, we had a motion and a second at the beginning of this. I am saying that if we receive this, fine, that is the motion but the other item is to defer this. Defer this to when, I do not know but if we receive this today, I just made my personal plea when we get to next week's agenda item to defer the Resolution until October 9th so that we can give them what I laid out in the commentary by receiving this today.

Mr. Hooser: Okay. So, you are not asking us to make a decision on the item that is on next week's agenda today?

Chair Furfaro:

No.

Mr. Hooser:

I just want to be clear on that.

Chair Furfaro: I am asking that we move to receive this with the understanding that I am making a presentation on something to be considered next week on the deferral.

Mr. Hooser: Okay, just so I am clear. A vote to support the motion is not a vote to support a deferral on next week's items on the agenda?

Chair Furfaro:

Yes.

Mr. Hooser:

Okay.

Chair Furfaro: I am not asking you to commit your vote on this receiving it. I am asking you to consider the narrative I just went through because of the points that I made and the legal briefing.

Mr. Hooser: I understand and appreciate your thoughts and we will have a full discussion next week, I am sure.

Chair Furfaro:

I am sure we will.

Mr. Bynum: With all due respect I think we are violating the Sunshine Law by discussing whether we are going to vote or defer a Resolution that is not even on the agenda this week. I am just really uncomfortable with that.

Chair Furfaro: Okay. You can continue to be uncomfortable. I am comfortable because I am saying in this discussion I want to clarify what you answered to the procedural process on what your department needs might lead us up to a need of a deferral next week. These are the things that came out of today's

discussion, today's Executive Session, today's legal briefing, and those things might lead us up to deferring the Resolution. If not, we will just continue with what it is.

Mr. Kagawa: Are we in discussion?

Chair Furfaro: If we are in discussion, why do we not take a five (5) minute recess for a tape break and then I will give you more discussion time.

There being no objections, the Council recessed at 4:21 p.m.

The Council reconvened at 4:28 p.m., and proceeded as follows:

Chair Furfaro: I said my particulars to you, Mike and obviously I want to make sure that if there is a member that thinks I violated something in the Sunshine Law, they are free to file a complaint against me. My dialogue today, I want to reframe from any further implication of a vote on next week's item but everything I am saying and I am committing to a discussion is based on the information that was shared with me today both in Executive Session and by your Department. You are basically saying you need time to get this process worked out? The item was already moved to be received today from the beginning or else we could not have this discussion. I am asking that your considerations to get the violations squared up will need a calendar that I summarized earlier. I am not asking for a vote on that. I am asking for people to understand what I am summarizing that that is the time you may need. The item today, the motion was made to receive and that is where we are at.

Mr. Kagawa: About a month ago when we first had Mike here I asked him for some progress. We may not have all of the progress that I maybe had hope for but we do have some progress. We have presentation that specifically shows some of the problems and reasons why we are here. We have even solutions that he is offering and one of the solutions to me makes sense however you cannot cure this problem without having all of the information in the files known. I think it is a matter of realizing that we are in a predicament and this thing is not going away. If they do not fix the problem, we are going to go... the Council may look into going deeper in forcing the Administration to this problem. I am hesitant that going that route will really cure this problem. I want to fix the problem. I want the problem to get better. I believe when you are not forthcoming with what you are doing and you are allowed to do it, it is like fraud. You should not get away with that. It is just as bad as stealing or what have you. I think there is going to come a point where we are going to add some manpower to the Planning Department because there is not only TVRs that we have to worried about, there VDAs, there are other things going on and I think the current people assigned to it are overwhelmed. I think we are moving in the right direction and we have a commitment for a future date like the Chair indicated and I am looking forward to seeing the results on that date. Thank you.

Mr. Hooser: I want to again thank the Director of Planning for his presentation and the County Attorney's Office for theirs. I think in some respect, today feels like somewhat of a turning point. I feel I have more confidence that moving forward that the right steps will be taken. I feel like we have a commitment and I am hoping that the community, the Department, and the Administration recognizes that this is not going to go away. The County is not going to roll over. We are going to pursue this and we are going to enforce the law diligently. I have to say that those comments are focused on the moving forward. I

think we still have unresolved issues and I think we need to do our fact finding and we have an obligation to the community to do that fact finding and to address the end result issues. I believe they are separate, I think they are two (2) feet. One foot fell down, I felt pretty solidly today but I think the other needs to drop also to really move forward with our commitment. I look forward to the Planning Department fulfilling its commitment they made today, I look forward to next week's discussion on I hope to be the next step in the process.

Mr. Rapozo: I was not going to say anything today but I will. I have seen too many PowerPoints in the past and I have seen a lot of commitments in the past and a lot of promises in the past. This issue goes back many years. It is not just this year. For Mr. Kagawa and Mr. Hooser who were not here throughout the years, so I can understand the optimism you see because it is like yes, we are finally going to do something but I can tell you that if I went back far enough and I pulled some presentations from the Planning Department, we see the same thing. I am not as optimistic, I am not going to discuss next week's agenda item but I will say that my position as far as what needs to be done has not change and will not change. I believe as Mr. Hooser does is that going forward there is a great plan now, the play book is open, everyone saw the play book... we got to hold them accountable but that does not erase the reasons that we are here. I am more interested in, how will we ever fix the problems as Mr. Kagawa talks about if we do not identify the problems and that is what we need to do

Mr. Bynum: In 2000 the General Plan told us that this was a big problem and we should deal with it right away. The fact is and I will not go into all the details but I know that nothing happened till March 7, 2008. I voted against the bill in March 7, 2008 because it... we voted for this bill 7:0 and then it got reconsidered and modified and I voted against it because it said if you have a zoning violation, you lose your right to run this business forever. I can read. I know that it is illegal; I know that we cannot do that. We cannot say... and it is like if you said to a restaurant "you had a health code violation, so you are out of business." What government can do is say, "fix the health code violation." In our bill the one that I authored with a lot of help, I said "and if you do not fix that violation, you have to cease and desist until you do." There are some debate about whether we have that authority or not but we made it as strong as we could and then the Administration came back and said "look, this bill you gave us has got problems like the one I just described," and so we fixed it. We said "this is really serious, we are really serious about this, and how many people do you need?" We have given you two (2) full time people, do you need two (2) more because we want to make sure that this is done right. We have waited so long, it has been so... and it was like "no, no we got it." Well, it was not handled. Obviously, there are some serious problems. Now, I very much appreciate the response over the last few weeks from the Prosecutor's Office who said, "I want to get involved with this, you need to help me with my budget," unfortunately we did do that. What Mike presented here today is great and I do have trust in this current Administration because I see tremendous improvements in Planning – huge improvements in Planning under the leadership of Mr. Dahilig. I think it is like a train that is going down the tracks and suddenly I am in charge and I might pull the brakes but that train is not going to stop for a while and I think there is some fairness to that analogy here. I do trust that Planning is starting to get it together but that does not mean that we cannot address how did we blow it so bad, you know if somebody got up here and said "it is not true Tim, we got all of those documents," and I know this issue is much bigger than that. There is the health code stuff, the flood zones things, and somebody has already died, this is pretty serious stuff but I focus on that because it is not that

complex. We wrote in the law, "these documents are required." If the Department never got those documents and approved permits, it is just appalling. Tell me that is not the case but if it is, we got to figure out how we can blow it that bad, this is not just a minor blow it, this is a major... I have not heard those assurances. Thank you Planning Department for working really hard and diligently and coming up with a great plan but I do not think that resolves the issue.

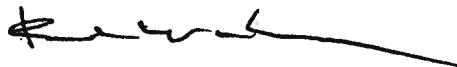
Chair Furfaro: Many of Mr. Bynum's comments included myself, I worked very hard on a number of the conditions in the bill whether it was the reservation system, making sure people understood that these documents had to be shown from the very beginning. I think we all have to take some responsibility but certainly the best thing that came out of today is we actually know where we are at. I think the legal briefing was helpful, the cooperation we had from the Planning Department, Planning Director was very much appreciated. On some of the commentary that I talked about as we led up to the receiving of this item has future impact because the main message here is, Mike and the Administration, we have to strengthen our thoughts on getting this job done. We have to strengthen our position in making sure... the Council cannot direct inspectors, the Council cannot direct members of the Administration's staff. Certainly what we got out of it is an understanding to strengthen our thoughts about doing this and doing it right. I thank Mr. Hooser for his comments and Mr. Rapozo's for his and we come up to next week's agenda item. I want to make sure we all understand from what I heard today we have to have a critical path laid out so that we as public servants can seek to serve the public who depends on us for the Ordinances and the laws that we pass that there is going to be the kind of follow through that they deserve that these Ordinances are in fact structured to really mean that it is the law. The main thing I got out of today's meeting is the fact that we are going to need time. I think not having the time is going to become very complicated, very expensive for us without providing an understanding going... and I mean very expensive for us as we go forward. The bottom line here I want to make sure we understand is today's briefing was beneficial to all parties – work through this, get it done appropriately, and consider everything that was not shared with us today, let us move to receive this and keep this discussion fresh on our mind next week.

The motion to receive C 2013-208 for the record was then put, and unanimously carried.

ADJOURNMENT.

There being no further business, the meeting was adjourned at 4:42 p.m.

Respectfully submitted,



RICKY WATANABE
County Clerk

:dmc

